IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:::

ORDER

Sohan Lal Soni
Vs.
The State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.3983/1997 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 20th November, 2006

PRESENT

REPORTABLE

HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr.M.S. Singhvi, Advocate, for the petitioner.
Mr.N.M. Lodha, Addl. Advocate General, for the respondents.

<><><>

BY THE COURT:

This is an old writ petition filed way back in the year 1997 by petitioner Sohan Lal Soni with the prayer that rule 208 of the Rajasthan Service Rules, 1951 (in short the Rules of 1951) and rule 25 of the Rajasthan Civil Services (Pension) Rules, 1996 (in short the Rules of 1996) in so far as these rules provide for forfeiture of past services on resignation be

declared as illegal and be struck down as being illegal and unconstitutional and further that rule 244(1) of the Rules of 19951 and rule 50(1) of the Rules of 1996 in so far as they provide for minimum qualifying service and age to become eligible for pension be also struck down as being illegal and unconstitutional. A consequential relief has also been prayed for in that the respondents be directed to grant pension to the petitioner proportionate to the period of service rendered by him by treating his resignation as retirement form service.

Factual matrix of the case is that the petitioner was appointed as Assistant Teacher in the Education Department of the respondents on 28.1.1955. He was later promoted to the post of Teacher Gr.II vide order dated 7.9.1964. In course of time however he was absorbed on the post of LDC vide order dated 31.1.1966. While so serving, the petitioner resigned from service on 5.6.1968. His resignation was accepted and consequentially he was relieved from service on 9.8.1968. The petitioner had thus completed 12 years and 8 months in the service of the respondents. According to rule 208 of the Rules

of 1951 which is in para materia to rule 25 of the Rules of 1996, upon a government servant resigning from service, past period of service rendered by him becomes liable to be forfeited and therefore the petitioner was not held entitled to any kind of pension.

The petitioner submitted a representation to the Principal, District Education & Training Institute, Jodhpur on 8.7.1997 for grant of pensionary benefits. His representation was forwarded to Deputy Director (Male) Education Department, Jodhpur on 3.2.1997. The petitioner then submitted another representation on 24.2.1997 and when nothing transpired, he ultimately served a legal notice for demand of justice on 20.3.1999. It is against the backdrop of these facts that the present writ petition has been filed with the prayers extracted above.

The respondents have contested the petition and have filed a detailed reply thereto. It has been contended that in view of the provisions contained in rule 208 of the Rules of

1951, the petitioner was not entitled to claim pension as whole of his past services stood forfeited upon acceptance of his resignation. It has been submitted that the resignation cannot be treated at par with voluntary retirement and there is great deal of difference between the two. While voluntary retirement is permissible under rule 244(1) of the Rules of 1951, provisions for resignation are contained in rule 204 and its consequences are contained in rule 208 supra. The claim for grant of pension set up by the petitioner is therefore untenable in law as being wholly misconceived and contrary to the provisions contained in the rules. It has been submitted that rule 208 of the Rules of 1951 and for that matter, rule 25 of the Rules of 1996 are both intra vires of provisions of Article 14 and 16 of the Constitution of India. The provision as to forfeiture of past service in the event of resignation is a valid piece of legislation inasmuch as the underlying idea behind it is that if the Government imparts training to the government servant and makes him rise to the occasion in anticipation of the fact that he shall be serving the Government and yet if he on his own decides to resign, why should he be held entitled to

benefit of pension. The period of service rendered by him in the past has therefore rightly been held liable to forfeiture. It has been denied that rule 208 of Rule of 1951 and rule 25 of the Rules of 1996 are in any manner arbitrary and discriminatory. Forfeiture of past service of a government servant who on his own volition resigns cannot be equated with a penalty. Qualifying service for voluntary retirement at the time when the petitioner resigned from service was 25 years with the condition that the Government servant should have attained the age of 50 years, whereas, the petitioner, when he resigned had barely served for 12 years and had even not attained the age of 50 years. There can be thus no comparison between these two methods of relinquishment of the service. The case of those who resigned and are denied pension consequent upon forfeiture of their past service cannot be grouped with those who are dismissed or removed by way of penalty and then denied pension. Forfeiture of past service and denial of pension in the case of the former cannot be therefore considered to have occasioned as a result of penalty and for the same reason therefore also cannot be considered

as penalty by itself. It has therefore been prayed that writ petition be dismissed.

I have heard Shri M.S. Singhvi counsel for the petitioner and Shri N.M. Lodha, the learned Additional Advocate General at length and perused the record.

Shri M.S. Singhvi, learned counsel for the petitioner argued that resignation can be in no way treated differently than voluntary retirement because it also has the element of willingness and is based on the own decision of the employee to relinquish the service. The two category of cases have to dealt with alike being similar in nature. According to Shri Singhvi, even if the petitioner had not completed the qualifying period of service so as to entitle him to seek voluntary retirement, his case would still be regulated by rule 256 of the RSR and he would be entitled to receive the amount of pension proportionate to the period of service actually rendered by him. Rule 208 of the Rules of 1951 and for that matter Rule 25 of the Rules of 1996 in so far as they provide

for forfeiture of past service and eventual denial of pension are ultra vires of Article 14 and 16 of the Constitution of India. These rules seeks to treat the similarly circumstanced government servants in a dissimilar manner and therefore they are liable to be declared illegal and unconstitutional. Shri Singhvi has placed reliance on the judgments of this Court in Lochan Vishal Vs. State of Rajasthan reported in 1997 WLR 52 and also in M/s. J.K. Cotton Spg. Wvg. Mills Company Ltd., Kanpur VS. State of U.P. & Ors reported in AIR 1990 SC 1808. According to Shri Singhvi the forfeiture of past service has penal consequence therefore in common parlance, amount to penalty resulting into break in service. Such a penalty cannot be awarded to a government servant except in the case of a proven misconduct. To support his this contention, Shri Singhvi relied upon the judgment in Shiv Shanker & Anr Vs. Union of India & Ors reported (1985) 2 SCC 30 and in Dayal Saran Sanan Vs. Union of India & Ors reported (1980) 3 SCC 25. Shri Singhvi further argued that the respondents cannot raise objection with regard to delay in filing of the writ petition because the claim of pension give rise to a continuing cause of

action and delay cannot come in the way of claiming pension. In order to buttress his argument, Shri Singhvi relied upon the judgment of this Court in Smt. Shanti Devi Vs. State of Rajasthan reported 2003(1) RLR 303 and in Nagar Nigam, Jaipur & Anr. Vs. Ramjilal & Ors reported RLR 2004(3) 1.

Shri N.M. Lodha, learned Additional Advocate General appearing for the respondents argued that while the petitioner resigned form service in the year 1968 he has filed the writ petition after 25 years thereafter as late as in the year 1997 therefore the writ petition is liable to be dismissed. In support of his argument, he has relied upon the judgment of the Hon'ble Supreme Court in Aflatoon & Ors Vs. Lt. Governor of Delhi & Ors reported in AIR 1974 SC 2077 and in Vishwas Nagar Evacuee Plot Purchaser Association & Anr. Vs. Under Secretary, Delhi Admn. & Ors reported in AIR 1990 SC 849. He argued that resignation cannot be treated at par with the voluntary retirement. Once a government servant resigns his past service is liable to be forfeited by operation of law as contained in rule 208 of the Rules of 1951. Even otherwise,

the petitioner cannot be held entitled to pension as he did not complete the qualifying service for voluntary retirement. When the petitioner retired from service in the year 1968, period for qualifying service was 25 years with completion of 50 years of age. The petitioner had neither completed 25 years of service nor had attained 50 years of age. After acceptance of his resignation, he for the first time made representation in the year 1997, which representation itself was enormously delayed. Challenge to Rule 25 of the Rules of 1996 is wholly misconceived because these rules would apply to only such persons who retired from service after 1.10.1996. Moreover, the petitioner has taken steps to challenge rule 208 of the Rules of 1951 at a time when those rules already stood repealed by Rules of 1996 and validity of a repealed rule cannot be subject matter of challenge. Shri Lodha argued that even otherwise, both the rules i.e. rule 208 of the Rules of 1951 and rule 25 of the Rules of 1996 are valid piece of legislation. There is always a presumption in favour of constitutionality of a law till it is declared ultra vires. Shri Lodha in this connection relied upon the judgments of the

Hon'ble Supreme Court in Bhuri Nath & Ors Vs. State of J&K & Ors (1997)2 SCC 745 and in Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd. & Ors AIR 2001 SC 724. Citing the judgment of the Hon'ble Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education & Ors Vs. Paritosh Bhupesh Kurmarsheth etc etc AIR 1984 SC 1543 and in State of Bihar & Ors etc etc Vs. Bihar Distillery Ltd., etc etc AIR 1997 SC 1511, Shri Lodha argued that a lawfully enacted provision of law can be declared unconstitutional only when it is shown to have been enacted without legislative competence or against parental Act or in violation of any fundamental right. Such an unconstitutionality must be plainly pleaded and clearly established. In examining constitutional validity of legislation, the courts are required to make an endevour to sustain the validity of an Act to the extent possible.

Shri Lodha further argued that the acceptance of resignation of a government servant culminates into forfeiture of his past service. There is always qualifying period of service

in the case of voluntary retirement but there is no such requirement in the matter of resignation. Those who relinquish service by way of resignation and those who voluntarily retire form two distinct and separate classes which qualify the requirement of reasonable classification. No discrimination is therefore meted out to those who resign from service if they are not granted the pensionary benefits. This is so because resignation from service brings about a complete cessation of master and servant relationship whereas voluntarily retirement keeps it alive for the purpose of pension and other retiral benefits. Shri Lodha in order to support his contention relied upon the Hon'ble Supreme Court judgment in UCO Bank & Ors Vs. Sanwar Mal (2004) 4 SCC 412, Reserve Bank of India & Anr. Vs. Cecil Dennis Solomon & Anr. (2004) 9 SCC 461, Union of India & Ors. Vs. Braj Nandan Singh (2005) 8 SCC 325 and M/s. J.K. Cotton Spg. & Wvg. Mills Company Ltd., Kanpur Vs. State of U.P. & Ors AIR 1990 SC 1808. Lastly, Shri Lodha relied upon the judgment of the Hon'ble Supreme Court in Anant Mills Co. Ltd. etc etc Vs. State of Gujarat AIR 1975 SC 1234 for the proposition that pension is not fundamental right

but is a statutory right and therefore can be regulated by condition of qualifying service. Shri Lodha, Additional Advocate General therefore prayed that the present writ petition be dismissed.

I have given my thoughtful consideration to the arguments advanced by both the learned counsel for the parties and perused the material on record.

In order to appreciate the true content and meaning of rules under challenge especially rule 208 of the Rules of 1951 and rule 25 of the Rules of 1996 it would be profitable to reproduce those rules in extenso: -

> "**208 Resignation, dismissal or removal for misconduct etc.** (a) Resignation of the public service of dismissal or removal from it for misconduct, insolvency, inefficiency not due to age or failure to pass a prescribed examination entails forfeiture of past service.
>
> (b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public service.

In case where an interruption in service is inevitable due to the two appointments being at different stations, such interruptions, not exceeding the joining time permissible under the rules on transfer, shall be covered by grant of leave of any kind due to the Government servant on the date relief or by formal condonation under Rule 212 to the extent to which the period is not covered by the leave due to the Government servant."

"**25. Forfeiture of service on resignation**

(1)Resignation form a service or a post, entails forfeiture of past service.

(2)A resignation shall not entail forfeiture of past service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3)Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time admissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condonation to the extent t which the period is not covered by leave due to him."

At the outset it may be noted that while rule 208 of the Rules of 1951 was the rule in force when the petitioner resigned from service and it was by virtue of that rule he was

denied pension as his past service was forfeited by operation of law contained in that rule. Feeling aggrieved thereby, he has filed the present writ petition. Ordinarily, a petition like the present one where a government servant resigned from service and has chosen not to challenge the validity of the rules forfeiting his past service cannot be entertained at such a belated stage after almost three decades. What is more significant to note is that this delay alone may not be responsible for refusing to entertain the present writ petition but there is one more additional factor in that in the course of time, rule 208 and in fact the complete Vol.I Part B of the Rules of 1951 have been repealed and replaced by Rules of 1996. But even then the new rules also incorporates a rule similar to rule 208 in its rule 25. Notwithstanding enormous delay in seeking to challenge the validity of rule and consequential claim of pension, refusal to entertain the petition on the ground of delay alone however would result in complete denial of the remedy to the petitioner who in fact is claiming pension though consequential to the rule being declared unconstitutional. In view of this peculiarity of the

case therefore, I propose to decide the writ petition on merits rather than dismissing it on the ground of delay.

Argument of learned counsel for the petitioner that the government servant resigning from service cannot be treated differently than those who retire voluntary and therefore dissimilar treatment provided to them result into violation of Articles 14 and 16 of the Constitution of India is noted to be rejected for the reasons as I shall state presently.

Their Lordships of the Hon'ble Supreme Court in Reserve Bank of India & Anr. (supra) were considering a similar argument where certain employees of Reserve Bank of India resigned from service having received the superannuation benefits under the contributory provisions and gratuity schemes. The Reserve Bank Pension Regulation, 1990 were later introduced which provided for the benefit of pension to those who retire voluntarily. Their Lordships while rejecting the argument that both resignation and voluntary retirement involved voluntary acts and therefore be treated alike in paras

no.10 and 11 of the judgment held as under: -

> "10. In service jurisprudence, the expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Thus both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it an only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retrial benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept , and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary. In Punjab National Bank V. P.K. Mittal on interpretation of Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In Union of India vs. Gopal Chand Misra it was held in the case of a judge of the High Court having regard to Article 217 of the Constitution that he has a unilateral right or privilege to resign his office and his resignation becomes effective from the date which he, of his own violation, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary

proceedings, the employer can exercise the power.

> 11. On the contrary, as noted by this court in Dinesh Chandra Sangma v. State of Assam while the Government reserves its right to compulsorily retire a government servant, even against his wish, there is a corresponding right of the government servant to voluntarily retire from service. Voluntary retirement is a condition of service created by statutory provision whereas resignation is an implied term of any employer-employee relationship."

This judgment was latter followed by the Hon'ble Supreme Court in UCO Bank & Ors (supra) their Lordships while rejecting the arguments that forfeiture of past service in the event of acceptance would amount to penalty made an elaborate discussion on the question of distinction between these two methods of relinquishment of service in the following words: -

> "9._____The word "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to

the extent that there is severance of employment (sic is the same) but in service jurisprudence both the expressions are understood differently. Under the Regulations, the expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings. The Pension Scheme herein is based on actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The Scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master-and-servant relationship between voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the Bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-a-vis voluntary retirement and acceptance thereof. Since the Pension Regulations disqualify an employee, who has resigned, from claiming pension, the respondent cannot claim membership of the fund. In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any merit in the arguments advanced on behalf of the respondent that Regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees. The view we

> have taken in support by the judgment of this Court in the case of Reserve Bank of India vs. Cecil Dennis Solomon. Before concluding we may state that Regulation 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from service from becoming a member of the fund. Such employees have received their retiral benefits earlier. The Pension Scheme, as stated above, only provides for a second retiral benefit. Hence, there is no question of penalty being imposed on such employees as alleged. The Pension Scheme only provides for an avenue for investment to retirees. They are provided avenue to put in their savings and as a term or condition which is more in the nature of an eligibility criterion, the Scheme disentitles such category of employees as are out of it."

In Braj Nandan Singh's case (supra) their Lordships were again called upon to examine rule 26 of the CCA Rules which is in para materia to the rules under examination in the present proceedings. For the facility of comparison the said rule is reproduced hereinbelow:

> "26. Forfeiture of service on resignation.-(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.
>
> (2)A resignation shall not entail forfeiture of past service if it has been submitted to take up, with

proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

Argument that was raised in that case was that when the rule mandates that resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, the rule does not completely wipe out entitlement to the pension as it provides for an escape route. Rejecting the arguments, their lordships in para no.5 observed as under: -

"5. ***** ****** ****** ***

Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. The language is couched in mandatory terms. However, sub-rule (2) is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned counsel for the

> respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rule (1) and (2) cannot be lost sight of while deciding the question of entitlement to pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded form the period of qualifying service. The language of Rule 26 sub-rule (1) an (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision shall be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the learned counsel for the respondent that Rule 26 sub-rule(1) and (2) has limited operation and does not wipe out entitlement to pension as qualified in Rule 49. The said rule deals with amount of pension and not with entitlement."

While rejecting the arguments that the acceptance for resignation would tantamount to retrenchment, their Lordships of the Hon'ble Supreme Court in M/s. J.K. Cotton Spg. & Wvg.

Mills Co. Ltd, Kanpur (supra) analyzed the effect and consequence of resignation in the following terms:

> "4.....It becomes clear on a plain reading of the definition of the term 'retrenchment' that it comprises of two parts; the first part is the inclusive part which defines retrenchment whereas the second part is in the nature of an exception and excludes two types of cases from the scope and ambit of the said definition. Under the first part termination of an employee's service by the employer for any reason whatsoever, otherwise than by way of punishment inflicted as a disciplinary measure, amounts to retrenchment. Under the second part cases of (i) voluntary retirement, and (ii) retirement on superannuation are excluded from purview of the first part of the definition. Termination of service can be brought about in diverse ways by an employer but every termination is not retrenchment, as for example, terminating of service by way of punishment for proved misconduct. The words' for any reason whatsoever' are undoubtedly words of wide import and hence termination of service by the employer will attract the definition of retrenchment unless it is shown to be penal in nature brought about by way of disciplinary action or as falling within one of the two exclusion clauses extracted earlier."

Their Lordships in para no.8 of the judgment while considering meaning of the word "resign" further observed as under: -

"8. In the present case the employee's request contained in the letter of resignation was accepted by the employer and that brought an end to the contract of service. The meaning of term 'resign' as found in the Shorter Oxford Dictionary includes 'retirement'. Therefore, when an employee voluntarily tenders his resignation it is an act by which he voluntarily gives up his job. We are, therefore, of the opinion that such a situation would be covered by the expression 'voluntary retirement' within the meaning of Cl. (i) of Sec. 2(s) of the State Act. In Santosh Gupta's case (AIR 1980 SC 1219), Chinnappa Reddy, J. observed as under (at p.1220 of AIR):

> "Voluntary retrenchment of a workman or the retrenchment of the workman or reaching the age of superannuation can hardly be described as termination, by the employer, of the service of a workman."
>
> (Hear the word 'retrenchment' has reference to 'retirement.)

The above observation clearly supports the view which commends to us. We are, therefore, of the opinion that the High Court was not right in concluding that because the employer accepted the resignation offer voluntarily made by the employee, he terminated the service of the employee and such termination, therefore, fell within the expression 'retrenchment' rendering him liable to compensate the employer under S.6N_____"

In Union of India & Ors. Vs. Rakesh Kumar (2001) 4 SCC 309 their Lordships of the Hon'ble Supreme Court interpreated

rule 19 of the BSF Rules relating to resignation from service in the context of claim of pension which was regulated by rule 49 of the CCA (Pension) Rules. While rejecting the prayer for grant of pension proportionate to the period of service rendered by the employee concerned, their Lordships in para no.16 of the judgment observed as under: -

> "16.....Further clause 2(a) of Rule 49 specifically provides for grant of pension if a government servant retires after completing qualifying service of not less than 33 years. The amount of pension is to be calculated at fifty per can of average emoluments subject to maximum provided therein. Clause 2(a) upon which much reliance is placed indicates that in case of a government servant retiring in accordance with the provisions of the Rules before completing qualifying service of 33 years, but after completing qualifying service of ten years, the pension shall be proportionate the amount of pension admissible under clause 2(a) and in no case, the amount of pension shall be less than Rs.375 per month. This would only mean that in case where a government servant retires on superannuation i.e. the age of compulsory retirement as per service conditions or in accordance with the CCA (Pension) Rules, after completing 10 years of qualifying service, he would get pension which is to be calculated and quantified as provided under clause 2 of the Rule 49. This clause would cover cases of retirement under Rule 35 and 36, that is, voluntary retirement after 20 years of qualifying service, compulsory retirement after the prescribed age and such other cases as

> provided under the Rules. However,this has nothing to do with the quitting of service after tendering resignation. It is also to be stated that Rule 26 of the CCS (Pension) Rules specifically provides that resignation from a service or post entails forfeiture of past service unless resignation is submitted to take up, with proper permission, another appointment under the Government where service qualifies. Hence, on the basis of Rule 49 a member of BSF who has resigned from his post after completing more than 10 years of qualifying service but less than 20 years would not be eligible to get pensionary benefits. There is no other provision in the CCS (Pension) Rules giving such benefit to such government servants."

So far as judgments relied upon by Shri Singhvi, learned counsel for the petitioner in Lochan Vishan and Ramjilal (supra) are concerned, they turned out on their own peculiar facts and cannot be any help to the petitioner. Elaborate discussion of law made as aforesaid would clearly bear it out that the government servants, who resign from service and those who voluntary retire are two separate and distinct classes and therefore the effect and consequences of their relinquishment of service by these two modes are also entirely different. While cessation of service brought about in both the methods is attributable to voluntary act of the government

servant, their consequences are regulated by separate rules. While the resignation brings about a complete cessation of master and servant relationship resulting into severance of employment, the voluntary retirement maintains such relationship for the purpose of grant of retiral benefits in view of the past service. Resignation can be tendered irrespective of the period of service rendered by the employee, in the case of voluntary retirement however, he is required to have completed requisite period of service. While acceptance of resignation is dependent upon discretion of the employer, voluntary retirement upon completion of qualifying service is the right of the government servant entitling him also to retiral benefits. Different yardsticks and criteria are applied in the case of resignation vis a vis voluntary retirement and their acceptance. If a government servant on his own decides to resign while knowing the consequence of forfeiture of his past service, such forfeiture cannot be considered as imposition of penalty. There is therefore no case of any discrimination and consequent violation of Article 14 and 16 of the Constitution of India. In my considered view, Rule 208 of the Rules of 1951

and the Rule 25 of the Rules of 1996 and for the same reasons elaborately discussed above, therefore, Rule 244(1) of the Rules of 1951 and Rule 50(1) of the Rules of 1996 are perfectly valid piece of legislation and they are held to be intra vires of Article 14 and 16 of the Constitution of India.

As a result of the aforesaid discussions, the present writ petition fails and is hereby dismissed with no order as to costs.

(MOHAMMAD RAFIQ),J.

c.p.goyal/-